

# COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

## FOURTH REPORT

*(Presented on the 10th December, 1980)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION  
(1980-81) •

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SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer*.

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\*Resigned w.e.f. the 10th November, 1980.

# REPORT

## I

### INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Fourth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 27th August and 8th September, 1980.

3. The Committee took evidence of the representatives of the Ministry of Communications regarding the Indian Telegraph (Fourth Amendment) Rules, 1976, at their sitting held on the 6th September, 1980.

4. The Committee considered and adopted this Report at their sitting held on the 2nd December, 1980.

5. The Minutes of the sittings, which form part of the Report, are appended to it.

6. A statement showing the summary of recommendations/observations of the Committee is appended to the Report (Appendix I).

## II

### THE INDIAN TELEGRAPH (FOURTH AMENDMENT) RULES, 1976 (G.S.R. 98-E of 1976)

7. Clause (xi) of Rule 40 of the Indian Telegraph Rules, as substituted by the Indian Telegraph (Fourth Amendment) Rules, 1976, provides for levy of a fee of Rs. 100/- for registration of an abbreviated address (both Roman and Devanagari) payable for the calendar year in advance. Similarly sub-rule (3) of Rule 68, *ibid*, as substituted, provides for the levy of the fees at the rate of Rs. 5/- for every batch of twenty telegrams or part thereof for the upkeep of accounts for acceptance of telegrams on Deposit Account System and Guarantee System.

8. Section 7 of the Indian Telegraph Act, 1885 (13 of 1885), under which the above Rules had been framed, did not appear to expressly authorise the Central Government to levy fees for registration of abbreviated addresses and upkeeping the accounts referred to above.



9. On the 21st September, 1976, the Ministry of Communications (Posts and Telegraphs Board) were requested to cite the exact authority in the parent Act empowering them to levy the aforesaid fees. Subsequently, four reminders, dated the 25th April, 28th June, 17th September, 1977 and 2nd May, 1978 were issued to expedite their comments. It was after a period of 20 months that an interim reply dated the 30th May, 1978 was received from the Indian Posts and Telegraphs Department stating that the matter being a very fundamental one was being examined in consultation with the Ministry of Law. To a further reminder dated the 3rd August, 1978, the Indian Posts and Telegraphs Department in their communication dated the 14th August, 1978 stated that the Department might be allowed two months time for sending a final reply. In response to a subsequent reminder dated the 30th August, 1978, the Ministry of Communications sent a U.O. Note dated the 29th September, 1978 requesting for extension of time by two months as the matter was being examined by the Law Ministry in greater details. After a protracted correspondence, the Ministry made available a copy of their final reply dated the 1st November, 1978 under their cover dated the 4th May, 1979.

10. In their reply dated the 1st November, 1978 the Indian Posts and Telegraphs Department clarified the position as under:—

“...The case has been examined carefully in consultation with the Ministry of Law. In this connection attention is specifically invited to sub-section (3) of section 3, clause (a) of sub-section (2) of section 7, and clause (h) of sub-section (2) of section 7 of the Indian Telegraph Act, 1885. The relevant sub-sections are indicated below for ready reference:—

Section 3: In this Act, unless there is something repugnant in definitions, the subject or context—

(1) .....

(2) .....

(3) ‘Message’ means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered.

Section 7: Rules under this section may provide for all or any of the following among other matters that is to say—

(1) .....

(2) .....

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted (within India).
- (b) .....
- (c) .....
- (d) ..... •
- (e) .....
- (f) .....
- (g) .....
- (h) the time at which, the manner in which, the conditions under which and the persons by whom the rates, charges and fees mentioned in this sub section shall be paid and the furnishing of security for the payment of such rates, charges and fees.

On reading of the above provisions, *prima facie*, it may be seen that the rules in question could be framed by the Central Government....

11. At their sitting held on the 27th August, 1980, the Committee considered the matter and decided to hear oral evidence of the representatives of the Ministry of Communications regarding delay of two years in finalising their comments to the points referred to them by the Committee.

12. During evidence before the Committee on the 6th September, 1980, the representatives of the Ministry of Communications explained that with regard to the five references made to them, the sections concerned in the Ministry had reported in writing that three references of 1977 were not received and were not available with them. They had, however, received first and the last references of the 21st September, 1976 and 2nd May, 1978 respectively. When enquired whether the delay in sending the reply was justified, the representative apologised for the inordinate delay.

13. When asked whether there was any special procedure laid down to deal with the papers received from Parliament, the representative stated that there was none. The Committee were informed that there was a Parliament Section whose function was to see that Parliamentary papers were dealt with expeditiously in the respective Sections. The representative admitted that, in this particular case, the Parliament Cell in the Ministry did not function and that the file remained untraced for 16 months. It was stated that they had issued instructions after this. The representative assured the

Committee to 'tone up the Parliament Section which must act as a bridge between Parliament and the Ministry.

14. The Committee note the reply of the Ministry of Communications (Indian Posts and Telegraphs Department) in consultation with the Ministry of Law, that the Central Government could levy fees for registration of abbreviated addresses and upkeeping the accounts, in exercise of the powers conferred by clauses (a) and (b) of sub-section (2) of section 7 of the Indian Telegraph Act, 1885.

15. The Committee, however, take serious note of the inordinate delay in furnishing information to the Committee. The Committee have time and again stressed that inordinate delays like the present one unnecessarily disturb the schedule of work of the Committee. The Committee desire the Ministry to streamline their procedure and devise suitable measures to eliminate the delays in dealing with the Parliamentary references. The Committee would like to be informed of the measures taken in this regard within three months of the presentation of the Report.

### III

- (i) THE DEPARTMENT OF SPACE EMPLOYEES' (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1976 (S.O. 270-E OF 1976);
- (ii) THE EXPORT INSPECTION COUNCIL EMPLOYEES' (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1978 (S.O. 42 OF 1978); AND
- (iii) THE EXPORT INSPECTION AGENCY EMPLOYEES' (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1978 (S.O. 43 OF 1978).

16. Sub-rule (4) of Rule 7 of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976, reads as under:—

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decide to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order or dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

17. Similarly sub-rule (4) of Rule 6 of the Export Inspection Council|Agency Employees' (Classification, Control and Appeal) Rules, 1978 includes provisions on the above lines.

18. It was felt that after a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee has been set aside or declared void by a court of law, another enquiry on the same allegations should not be held against him unless the order of the court was based not on the merits of the case but only on purely technical grounds or unless any fresh material on the subject has come to light.

19. The Department of Space, to whom the matter was referred, in their reply dated the 18th April, 1977, stated that the said Rule 7 (4) corresponds to Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and, therefore, it may not be treated as unusual.

20. The matter was then taken up with the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) who in their reply dated the 19th January, 1978, have stated as under:—

“Rule 10(4) of the CCS(CCA) Rules, 1965 provides that where the penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal, removal or compulsory retirement. It will be seen from the Rule that it contemplated the holding of a further inquiry by the disciplinary authority on a consideration of the circumstances of the case. If the court had given its verdict on the merits of the case, the question of the disciplinary authority holding further inquiry on the same charges which have been gone into by the court, would not arise. However, even in a case where the court has given its verdict on the merits of a case, it will be open to the disciplinary authorities to initiate proceedings in respect of charges which have not been gone into by the court. The position is being suitably clarified by means of instructions to all authorities concerned.”

21. The Ministry of Commerce in their reply dated the 4th November, 1978 in respect of the Export Inspection Council/Agency Employees' (Classification, Control and Appeal) Rules, 1978, have stated as under:—

"....The matter was examined in consultation with the Ministry of Law and Department of Personnel and Administrative Reforms. Rule 6(4) of the Export Inspection Council Employees (Classification, Control and Appeal) Rules, 1978 (S. O. 42 of 1978) and the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978 (S.O. 43 of 1978) has been framed in accordance with the Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on a reference made to Department of Personnel and Administrative Reforms, they observed as follows:—

On a similar point made by the Committee of Subordinate Legislation (Lok Sabha) with reference to similar provisions in Department of Space Employees (C.C. & A) Rules, 1976, the position was suitably clarified in their O.M. No. 11012/2477-Estt. (A) dated March 18, 1978. A copy of O.M. No. 11012/24/77-Estt. (A) dated March 18, 1978 is enclosed\* for ready reference....

In view of the above, the question is whether there is still need to amend Rule 6(4) of the Export Inspection Council Employees (CC&A) Rules, 1978 (S.O. 42 of 1978) and Export Inspection Agency Employees (CC. & A.) Rules, 1978 (S.O. 43 of 1978). The guidelines issued by the Department of Personnel and Administrative Reforms dated March 18, 1978 could of course be made applicable in disciplinary cases of the employees of the Export Inspection Council/Export Inspection Agency."

22. The Committee observe that in accordance with the administrative instructions contained in the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) O.M. No. 11012/2/24 77-Estt.(A) dated the 18th March, 1978, further inquiry contemplated in Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement has been set aside by a court of law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the court.

23. The Committee further observe that in a similar case pertaining to the Coir Board Service (Classification, Control and Appeal) Bye-laws, 1969, the Department of Industrial Development amended the bye laws (Vide S.O. 4389 notified on 20th November, 1976) so as to add the following proviso:—

“Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.”

24. The Committee have time and again stressed that the administrative instructions are not substitute to statutory rules/regulations. Such instructions are not being published in the Official Gazette and, therefore, escape the notice of the Committee. The Committee desire the Department of Space and the Ministry of Commerce to amend the respective rules in question on the lines of instructions issued by the Ministry of Home Affairs on the 18th March, 1978. They further desire the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) to amend Rule 10(4) of the Central Civil Services, (Classification, Control and Appeal) Rules, 1965 so as to place the instructions on a statutory footing.

#### IV

#### THE CENTRAL COMPANY LAW SERVICE (AMENDMENT) RULES, 1978 (G.S.R. 145 OF 1978)

25. Sub-rule (5) of Rule 12 of the Central Company Law Service Rules, 1965, as substituted by Amendment of 1978 (G.S.R. 145 of 1978) reads as under:—

“(5) Nothing in this rule shall be deemed to preclude the Central Government from determining, after consultation with the Commission, the seniority of any member of the Service in any other manner.”

26. The new sub-rule empowered the Central Government to determine the seniority of any member of the Service in any manner other than the principles laid down in sub rules (1) to (4) of Rule 12. This provision of determination of seniority by Central Government at their discretion appeared to nullify the principles for fixation of seniority as contained in other provisions of Rule 12. It was felt that if at any time it became necessary for Government to relax any of the provisions of the rules, they could take resort to the following Rule 20 of the Central Company Law Service Rules, 1965:—

“Relaxation.—The Central Government may, in consultation with the Commission, relax any of the provisions of these

rules to such extent as may be necessary to ensure satisfactory working of the Service or to remove any inequitable results."

27. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs), with whom the matter was taken up, in their reply dated the 13th November, 1978 have stated:—

"....the matter has been examined in consultation with the Legislative Department as well as Department of Legal Affairs. They have advised that sub-rule 5 of Rule 12 is only an enabling provision to determine the seniority of a member of the Central Company Law Service in a manner other than the manner indicated in that rule if the operation of the principles specified in that rule results in undue hardship. Resort to this provision will be very rare and will be done only after consultation with the Union Public Service Commission. Further, such a provision has been included in the rules relating to other services (such as Central Legal Service) as well as in the general rules governing the determination of seniority. As such, this is not a provision which finds a place only in the Central Company Law Service Rules, 1965 to meet any circumstances peculiar to this service. The Ministry of Law have further advised that Rule 20 of the Central Company Law Service Rules, 1965 will not serve the purpose for which Rule 12(5) was framed and the benefit under the latter rule which is available to other Government servants will not be available to the members of the Central Company Law Service, if the same is deleted."

28. The matter was thereupon referred to the Ministry (Department of Personnel and Administrative Reforms) for comments. In their reply dated the 26th October, 1979, the Department have stated as under:—

"As advised by the Ministry of Law, Rule 20 of the Central Company Service Rules covers a situation different from that envisaged in Rule 12(5) and is intended for obviating undue hardship. Sub-rule (5) of Rule 12 need be invoked only in cases not covered by the other sub-rules of Rule 12. Sub-rule (5) as it appears to vest excessive discretionary powers and needs modification. The Department of Company Affairs is, therefore, being advised to replace Rule 12(5) by a general clause as under:—

"Rule 12(5): In cases not covered by sub-rules (1) to (4) above seniority of officers appointed to the service shall

be governed by such orders as may be issued by the Government in consultation with the Commission.' "

29. In a subsequent communication dated the 11th April, 1980, the Department of Company Affairs have intimated as under:—

".....the matter has been further examined in consultation with the Department of Personnel and Administrative Reforms and the Department of Legal Affairs.

It is now proposed to substitute the existing sub-rule (5) of Rule 12 of the Central Company Law Service Rules, 1965 by the following:—

**'Rule 12(5):** In cases not covered by sub-rules (1) to (4) above seniority of officers appointed to the Service shall be governed by such principles as may be decided upon by the Government in consultation with the Commission.' "

30. The Committee note with satisfaction that, on being pointed out, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in consultation with the Department of Personnel and Administrative Reforms and the Department of Legal Affairs have agreed to amend sub-rule (5) of Rule 12 of the Central Company Law Service Rules to do away with the effect of its nullifying the principles of fixation of seniority laid down in sub-rules (1) to (4) of Rule 12 *ibid.* The Committee approve the proposed amendment and desire the Ministry to issue it at an early date.

## V

### THE GENERAL INSURANCE (RATIONALISATION AND REVISION OF PAY SCALES AND OTHER CONDITIONS OF SERVICE OF SUPERVISORY, CLERICAL AND SUBORDINATE STAFF) THIRD AMENDMENT SCHEME, 1978 (S.O. 1410 OF 1978)

31. Sub-clause (2) of clause 1 of the General Insurance (Rationalisation and Revision of Pay Scales and other conditions of Service of Supervisory, Clerical and Subordinate Staff) Third Amendment Scheme, 1978 provides that the amending Scheme shall come into force on the date of its publication in the Official Gazette, i.e. the 20th May, 1978. However, clause 2 of the Scheme aims at giving retrospective operation to certain provisions of the parent Scheme of 1974 involving financial implications. It reads as under:—

"In the first Schedule to the General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, in item IV relating to 'Qualification Pay',



in paragraph (5), for the figures, letters and word '27th May, 1974', the figures, letter and word '1st January, 1973' shall be substituted."

32. Attention of the Ministry of Finance (Department of Economic Affairs) was invited to the recommendation of the Committee contained in para 10 of their Second Report (Fourth Lok Sabha) and reiterated from time to time that all rules should be published before the date of their coming into force or they should be enforced from the date of their publication in the Gazette. If, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a footnote to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.

33. The Ministry were asked to furnish information on the following two points:—

- (i) express authority for giving retrospective effect to the scheme under the parent Act; and
- (ii) the reasons for not appending the explanatory memorandum to the above mentioned Scheme that no body would be adversely affected because of the retrospective effect given to the Scheme.

34. In their reply dated the 17th July, 1979, the Ministry have stated as under:—

...the first schedule of the General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 (as amended by Notification No. S.O. 472(E) dated the Fifth September, 1975) provides for payment of 'Qualification Pay' in item IV thereof. Sub-para (5) of item IV provides for payment of Qualification Pay to a confirmed employee, who qualifies in an examination or has qualified in an examination mentioned therein with effect from the date of publication of the results of the examination or 27th May, 1974 (i.e. the date from which the original scheme came into force), whichever is later. The General Insurance Business was nationalised with effect from First January, 1973 and although the above scheme came into force with effect from 27th May, 1974, the rationalised pay scales and allowances etc. were brought into force with effect from First January, 1973. The Gene-

ral Insurance Corporation had represented that the enforcement of the provisions pertaining to qualification pay was causing hardship to those employees who qualified in any of the Insurance examinations (for which the qualification pay was admissible) between the period from First January, 1973 to 27th May, 1974. In order to remove the hardship it was decided that this benefit may be allowed with effect from First January, 1973. It will, therefore, be appreciated that the employees were given these benefits from the retrospective date to remove hardship and no one would be adversely affected as a result of retrospective effect being given to the amendment in question.

The observations of the Lok Sabha Secretariat that the reasons for giving retrospective effect in the form of an explanatory Memo should be appended to the amending Scheme have been noted for strict compliance.

35. The Committee note with concern that despite a categorical reference by the Committee, the Ministry of Finance (Department of Economic Affairs) did not indicate anything about the express authority in the parent Act viz., the General Insurance Business (Nationalisation) Act, 1972 empowering them to give retrospective effect to the General Insurance (Rationalisation and Revision of Pay scales and other conditions of Service of Supervisory, Clerical and Subordinate Staff) Third Amendment Scheme, 1978. In this connection, the Committee note the opinion of the Attorney-General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no subordinate legislation can be given retrospective effect unless the law under which it is made authorises Government to give such retrospective effect. As the reply of the Ministry is silent on this point, the Committee cannot but infer that the retrospective effect given to the Scheme is without due legal sanction.

36. The Committee apprehend that the benefits accruing from the Scheme must have already been passed on to its beneficiaries as enough time has since elapsed and it will be rather a difficult and embarrassing exercise to withdraw the benefits already drawn both administratively as well as legally. In the opinion of the Committee, it will be yet another case of acting beyond the powers delegated by the Act, if the Ministry decide to annul the amending notification with retrospect effect in the absence of express authorisation therefor in the parent Act. In these circumstances, the only course left open to the Ministry is to approach Parliament for incorporating a provision in the enabling Act for validating the rules already made and given retrospective effect.

37. The Committee observe that a duty is also cast upon the Ministry of Law at the time of vetting to point out to the administrative Ministry if any statutory order aims at giving retrospective effect to any of its provisions without due legal authority in the enabling Act.

38. The Committee further observe that the amendment in question contains in all two clauses and both are contradictory to each other. The first clause states that the Scheme shall come into force on the date of its publication in the Official Gazette, i.e. the 20th May, 1978 whereas the other clause provides for retrospective effect to some of the provisions in the original Scheme from the 1st January, 1973. In the opinion of the Committee, such incongruity in an amending 'Order' consisting of only two clauses betrays lack of proper attention on the part of the Ministry in vital matters of legislation.

39. The Committee, however, note the assurance of the Ministry for appending the requisite explanatory memorandum indicating the reasons for giving retrospective effect in respect of all statutory orders in future. In view of the fact that a long time has elapsed the Committee do not, as an exception, insist on the publication of the explanatory memorandum in respect of the Scheme under reference at this late stage.

## VI

### THE DRUGS AND COSMETICS (FIRST AMENDMENT) RULES, 1978 (G.S.R. 376-E OF 1978).

40. Sub-rule (3) of Rule 154-A of the Drugs and Cosmetics Rules, as inserted by the first amendment Rules of 1978 (G.S.R. 376-E of 1978), reads as under:—

“(3) The licensing authority shall, before the grant of a loan licence, satisfy himself that the manufacturing unit has adequate equipment, staff, capacity for manufacture and facilities for testing, to undertake the manufacture on behalf of the applicant for a loan licence.”

41. It was felt that suitable guidelines on the minimum requirements of equipment, staff, capacity for manufacture and other facilities necessary for grant of a loan licence should be laid down with a view to obviating any scope of discrimination.

42. In their reply dated the 2nd February, 1980, the Ministry of Health and Family Welfare (Department of Health), with whom the matter was taken up, have stated:

"...the requirements of factory premises any hygienic conditions are prescribed under Schedule I to the Drugs and Cosmetics Rules. This industry of Ayurveda/Unani/Siddha drugs is yet in developing stage compared to the modern drugs and hence it was felt that further requirements on equipment, staff etc. for ISM on lines similar to Schedule M in respect of modern drugs can be considered subsequently at an appropriate time. The suggestion made is accepted and this matter will be placed before the Ayurvedic and Unani Drugs Technical Advisory Board at its next meeting and steps to lay down necessary guidelines will be taken up after obtaining the recommendations of the Board."

43. The Committee note with satisfaction that the Ministry of Health and Family Welfare (Department of Health) have agreed to lay down suitable guidelines in matters of minimum requirements of equipment, staff, capacity for manufacture and other facilities necessary for grant of a loan licence to a manufacturing unit and have proposed to place the matter before the Ayurvedic and Unani Drugs Technical Advisory Board at its next meeting for the purpose. The Committee desire the Ministry to process the matter expeditiously and to lay down suitable guidelines in the matter at their earliest.

## VII

- (i) THE CENTRAL ENGINEERING POOL GROUP 'A' OF THE MINISTRY OF SHIPPING AND TRANSPORT (ROADS WING) AMENDMENT RULES, 1978 (G.S.R. 646 OF 1978); AND
- (ii) THE CENTRAL ENGINEERING SERVICE (ROADS) GROUP 'A' OF THE MINISTRY OF SHIPPING AND TRANSPORT (ROADS WING) AMENDMENT RULES, 1978 (G.S.R. 647 OF 1978).

44. Proviso to sub-rule (i) of Rule 11 of the Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976, as substituted by amendment of 1978 (G.S.R. 646 of 1978), read as under:—

'Provided that the Government may, in appropriate cases curtail or extend the period of probation:

Provided further that, save in exceptional circumstances, the period of probation shall not be extended by more than a year at a time and no officer shall be kept on probation for more than double the normal period of probation:

Provided also that in cases where it is proposed to extend the period of probation, the Government shall give notice in writing of its intention to do so to the officer concerned within 8 weeks of the expiry of the initial or the extended probationary period."

45. Similar amendment was effected in proviso to sub-rule (1) of Rule 23 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 through amendment of 1978 (G.S.R. 647 of 1978).

46. To obviate any scope of discrimination and misuse of the powers vested by the new proviso in the matter of curtailing or extending the period of probation, it was felt that the competent authority must record in writing the reasons therefor.

47. The Ministry of Shipping and Transport (Transport Wing), with whom the matter was taken up, have stated in their reply dated the 27th July, 1979:—

"...the reasons for curtailment or extending the period of probation by the concerned authorities are being recorded in writing and as such it is considered not necessary to amend the Rules to provide for the same."

48. The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that the practice of recording reasons in writing by the concerned authorities for curtailment or extending the period of probation is already being adopted. The Committee, therefore, feel that the Ministry should have no objection in placing the same on a statutory footing by amending the rules suitably. The Committee would also like to emphasise that wherever the rules make allowance for 'exceptional circumstances' as provided for in the second proviso to sub-rules under reference, suitable guidelines defining such 'exceptional circumstances' should be laid down with a view to obviating any scope of discrimination in that regard. The Committee desire the Ministry to amend the Rules in question to the necessary effect at an early date.

## VIII

THE DIRECTORATE OF MARKETING AND INSPECTION, ACCOUNTANT (NON-SAS) RECRUITMENT RULES, 1978 (G.S.R. 525 OF 1978).

49. Entry under column 13 of the Schedule appended to the Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 regarding the circumstances in which Union Public Service Commission was to be consulted in making recruitment to the post of Accountant (Non-SAS), reads as under:

"As required under the rules".

The entry was vague inasmuch as it did not specify the rules to which it referred. It was felt the circumstances in which Union Public Service Commission was to be consulted, should have been clearly spelt out in the Rules.

50. The matter was taken up with the then Ministry of Agriculture and Irrigation (Department of Rural Development). In their reply dated the 29th May, 1979, the Ministry have stated:

"...the post of Accountant (Non-SAS) is a Group 'C' post. Therefore, consultation with U.P.S.C. is not required. As such, the entry under Col. 13 of the schedule to Recruitment Rules for this post is redundant and may be substituted by the words 'Not applicable.' Necessary action to amend this column is being taken by this Department."

51. According to the reply of the Ministry of Agriculture and Irrigation (Department of Rural Development)—now Ministry of Rural Reconstruction—the entry under column 13 of the schedule appended to the Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 is redundant inasmuch as consultation with the Union Public Service Commission is not required for the post of Accountant (Non-SAS) being a Group 'C' post. In this connection, the Committee note with satisfaction that, on being pointed out, the Ministry have agreed to amend the recruitment rules and are taking action to substitute the existing entry by the words 'Not applicable'. The Committee desire the Ministry to issue the necessary amendment at an early date.

IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 51 OF THE SIXTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE INDIAN CONSORTIUM FOR POWER PROJECTS PRIVATE LIMITED AND THE BHARAT HEAVY ELECTRICALS LIMITED AMALGAMATION ORDER, 1974 (G.S.R. 155-E OF 1975)

52. Paragraph 9 of the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 reads as under:

"Provisions respecting existing officers and other employees of the dissolved company.—Every Officer or other employee (excluding the Directors of the dissolved company) employed immediately before the appointed day in the dissolved company, shall, as from the appointed day, become an officer or other employee, as the case may be, of the company resulting from the amalgamation and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as he would have held the same under the dissolved company, if this order had not been made, and shall continue to do so unless and until he is duly removed from the employment in the company resulting from the amalgamation or until *his terms and conditions of employment are duly altered by that company.*"

53. In terms of the above provision the company resulting from the amalgamation had been empowered to alter the terms and conditions of the employees.

54. In this connection, attention of the Ministry of Law (Department of Company Affairs) was invited to the recommendation made by the Committee on Subordinate Legislation in paras 21—24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage.

55. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) sent the following reply:—

"... All similar Central Acts have guaranteed to the employees the existing terms and conditions of service and also provide for the alteration of such terms and conditions of the

service in accordance with due process of law. It is not possible to ensure, in the case of an insolvent company which becomes amalgamated with another company that the existing terms and conditions will not be altered to the disadvantage of the employee. The employee has been given an assurance that the alteration will be made in accordance with due process of law and consequently the employee will have a say with regard to the proposed alteration. In these circumstances, no amendment appears to be called for in the order in question."

56. During the scrutiny of another Amalgamation Order, namely, the Balmer Lawrie Co. Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976), it was noticed that paragraph 9 thereof provided for alteration of terms and conditions of service of employees by mutual consent.

57. Attention of the Ministry was invited to the above provision and they were requested to state whether in view of this they had any objection to amending the Order so as to bring it in accord with the later order.

58. In their reply, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) stated that the suggestions of the Committee would be given effect to in the future Orders to be made by the Board. They also stated that since the Order was issued quite sometime back, no useful purpose would be served by its amendment now.

59. After considering above reply of the Ministry, the Committee in para 51 of their Sixth Report (Sixth Lok Sabha) observed as under:

"The Committee note that the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have agreed to provide in all future amalgamation orders that the terms and conditions of service of the employees of the dissolved company/companies will be altered by the company resulting from amalgamation only by 'mutual consent' as has been provided for in the Balmer Lawrie and Company Ltd. and the Industrial Containers Ltd. Amalgamation Order, 1976 (G.S.R. 542-E of 1976). The Committee, however, see no reason for not providing a similar safeguard in the Indian Consortium for Power



Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 also. The Committee, therefore, desire the Department of Company Affairs to amend para 9 of the Order in question so as to provide for the alternation in the terms and conditions of service of employees of the dissolved company only by '**mutual consent**'."

60. In their action taken note dated the 13th August, 1979 on above recommendation the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have stated:

"...The recommendation of the Committee on Subordinate Legislation contained in para 51 of the above Report have been examined by this Department in consultation with the Department of Heavy Industry, the Administrative Department in this case. The said Department has expressed the view that since the amalgamation order was passed more than four years ago, its amendment, at this stage, may create some administrative problems more so, because the employees of the erstwhile Indian Consortium for Power Projects Private Ltd. are enjoying greater facilities and privileges in M/s. Bharat Heavy Electricals Ltd., than were available in Indian Consortium for Power Projects Private Ltd. though they were entitled to hold their offices on the same terms and conditions and with the same rights and privileges on which they would have held their offices in M/s. Indian Consortium for Power Projects Private Ltd. However, there may be some areas in which the privileges in Indian Consortium for Power Projects Ltd. were more favourable than in Bharat Heavy Electricals Ltd. In view of these facts the Ministry of Industry, Department of Heavy Industry has requested that the Committee on Subordinate Legislation may be requested not to insist on the amendment of amalgamation order at this stage. Incidentally it may be stated that the above recommendation of the Committee has already been noted by this Department for compliance in all future orders to be issued under section 396 of the Companies Act, 1956. The Lok Sabha Secretariat is, therefore, requested to place the above views in the matter before the Committee on Subordinate Legislation for reconsideration of the matter."

61. The Committee note with concern that the Department of Company Affairs have failed to comply with the recommendation

of the Committee made in para 51 of their Sixth Report (Sixth Lok Sabha) presented to the House on the 17th March, 1978. The Committee feel that had the Department of Company Affairs pursued the matter in the right earnestness, they could have amended the Indian Consortium for Power Projects Private Limited and the Bharat Heavy Electricals Limited Amalgamation Order much earlier.

62. The Committee, however, take note of the view expressed by the Department of Heavy Industry that the employees of the erstwhile Indian Consortium for Power Projects Private Limited are enjoying greater facilities and privileges in the Bharat Heavy Electricals Limited excepting some areas in which the privileges in the erstwhile Indian Consortium for Power Projects were more favourable.

63. In view of the fact that a long time has elapsed since the issue of the above Amalgamation Order in 1975, its amendment at this stage might create some administrative problems more so because the employees of the erstwhile Indian Consortium for Power Projects Private Limited enjoyed greater facilities and privileges in the newly constituted Bharat Heavy Electricals Limited, the Committee, as an exception, do not press for the amendment of the Amalgamation Order at this stage.

64. The Committee note in this connection that their recommendation contained in para 51 of Sixth Report (Sixth Lok Sabha) has been noted by the Department of Company Affairs for compliance in future. The Committee trust that the Department of Company Affairs would keep their assurance to the Committee while framing such amalgamation Orders in future.

## X

### ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS MADE BY, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION.

65. The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix III.

MOOL CHAND DAGA,  
Chairman,  
Committee on Subordinate Legislation.

NEW DELHI;  
December 2, 1980.  

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Agrahajana 11, 1902 (Saka).

## APPENDIX I

(Vide Para 6 of the Report)

### Summary of main Recommendations/Observations made by the Committee

S. No.	Para No.	Summary
1 (i)	14	The Committee note the reply of the Ministry of Communications (Indian Posts and Telegraphs Department) in consultation with the Ministry of Law, that the Central Government could levy fees for registration of abbreviated addresses and upkeeping the accounts, in exercise of the powers conferred by clauses (a) and (b) of sub-section (2) of section 7 of the Indian Telegraph Act, 1965.
(ii)	15	The Committee, however, take serious note of the inordinate delay in furnishing information to the Committee. The Committee have time and again stressed that inordinate delays like the present one unnecessarily disturb the schedule of work of the Committee. The Committee desire the Ministry to streamline their procedure and devise suitable measures to eliminate the delays in dealing with the Parliamentary references. The Committee would like to be informed of the measures taken in this regard within three months of the presentation of the Report.
2 (i)	22	The Committee observe that in accordance with the administrative instructions contained in the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) O.M. No. 11012/24/77-Estt.(A) dated the 18th March, 1978, further inquiry contemplated in Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, should not be ordered except

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in a case when the penalty of dismissal, removal or compulsory retirement has been set aside by a court of law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the court.

- (ii) 23      The Committee further observe that in a similar case pertaining to the Coir Board Service (Classification, Control and Appeal) Bye-laws, 1969, the Department of Industrial Development amended the bye-laws (*Vide* S.O. 4389 notified on 20th November, 1976) so as to add the following proviso:—

“Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.”

- (iii) 24      The Committee have time and again stressed that the administrative instructions are no substitute to statutory rules/regulations. Such instructions are not being published in the Official Gazette and, therefore, escape the notice of the Committee. The Committee desire the Department of Space and the Ministry of Commerce to amend the Department of Space Employees' (Classification, Control and Appeal) Rules; and the Export Inspection Council Employees' (Classification, Control and Appeal) Rules and the Export Inspection Agency Employees' (Classification, Control and Appeal) Rules respectively on the lines of instructions issued by the Ministry of Home Affairs on the 18th March, 1978. They further desire the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) to amend Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 so as to place the instructions on a statutory footing.

- 3      30      The Committee note with satisfaction that, on being pointed out, the Ministry of Law, Justice
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and Company Affairs (Department of Company Affairs) in consultation with the Department of Personnel and Administrative Reforms and the Department of Legal Affairs have agreed to amend sub-rule (5) of Rule 12 of the Central Company Law Service Rules to do away with the effect of its nullifying the principles of fixation of seniority laid down in sub-rules (1) to (4) of Rule 12 *ibid.* The Committee approve the following amendment, as proposed and desire the Ministry to issue it at an early date.

“Rule 12(5): In cases not covered by sub-rules (1) to (4) above seniority of officers appointed to the service shall be governed by such principles as may be decided upon by the Government in consultation with the Commission.”

4(i)

35

The Committee note with concern that despite a categorical reference by the Committee, the Ministry of Finance (Department of Economic Affairs) did not indicate anything about the express authority in the parent Act *viz.*, the General Insurance Business (Nationalisation) Act, 1972 empowering them to give retrospective effect to the General Insurance (Rationalisation and Revision of Pay scales and other conditions of Service of Supervisory, Clerical and Subordinate Staff) Third Amendment Scheme, 1978. In this connection, the Committee note the opinion of the Attorney General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no subordinate legislation can be given retrospective effect unless the law under which it is made authorises Government to give such retrospective effect. As the reply of the Ministry is silent on this point, the Committee cannot but infer that the retrospective effect given to the Scheme is without due legal sanction.

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(ii)	36	The Committee apprehend that the benefits accruing from the Scheme must have already been passed on to its beneficiaries as enough time has since elapsed and it will be rather a difficult and embarrassing exercise to withdraw the benefits already drawn both administratively as well as legally. In the opinion of the Committee, it will be yet another case of acting beyond the powers delegated by the Act, if the Ministry decide to annul the amending notification with retrospect effect in the absence of express authorisation therefor in the parent Act. In these circumstances, the only course left open to the Ministry is to approach Parliament for incorporating a provision in the enabling Act for validating the rules already made and given retrospective effect.
(iii)	37	The Committee observe that a duty is also cast upon the Ministry of Law at the time of vetting to point out to the administrative Ministry if any statutory order aims at giving retrospective effect to any of its provisions without due legal authority in the enabling Act.
(iv)	38	The Committee further observe that the amendment in question contains in all two clauses and both are contradictory to each other. The first clause states that the Scheme shall come into force on the date of its publication in the Official Gazette, i.e., the 20th May, 1978 whereas the other clause provides for retrospect effect to some of the provisions in the original Scheme from the 1st January, 1973. In the opinion of the Committee, such incongruity in an amending 'Order' consisting of only two clauses betrays lack of proper attention on the part of the Ministry in vital matters of legislation.
(v)	39	The Committee, however, note the assurance of the Ministry for appending the requisite explanatory memorandum indicating the reasons for giving retrospective effect in respect of all

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statutory orders in future. In view of the fact that a long time has elapsed, the Committee do not, as an exception, insist on the publication of the Explanatory Memorandum in respect of the Scheme under reference at this late stage.

5      43      The Committee note with satisfaction that the Ministry of Health and Family Welfare (Department of Health) have agreed to lay down suitable guidelines in matters of minimum requirements of equipment, staff, capacity for manufacture and other facilities necessary for grant of a loan licence to a manufacturing unit and have proposed to place the matter before the Ayurvedic and Unani Drugs Technical Advisory Board at its next meeting for the purpose. The Committee desire the Ministry to process the matter expeditiously and to lay down suitable guidelines in the matter at their earliest.

6      48      The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that the practice of recording reasons in writing by the concerned authorities for curtailment or extending the period of probation is already being adopted. The Committee, therefore, feel that the Ministry should have no objection in placing the same on a statutory footing by amending the rules suitably. The Committee would also like to emphasise that wherever the rules make allowance for 'exceptional circumstances' as provided for in the second proviso to sub-rules of the Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules and the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, suitable guidelines defining such 'exceptional circumstances' should be laid down with a view to obviating any scope of discrimination in that regard. The Committee desire the Ministry to amend the Rules in question to the necessary effect at an early date.

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7	51	<p>According to the reply of the Ministry of Agriculture and Irrigation (Department of Rural Development)—now Ministry of Rural Reconstruction—the entry under column 13 of the schedule appended to the Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 is redundant inasmuch as consultation with the Union Public Service Commission is not required for the post of Accountant (Non-SAS) being a Group 'C' post. In this connection, the Committee note with satisfaction that, on being pointed out, the Ministry have agreed to amend the recruitment rules and are taking action to substitute the existing entry by the words 'Not applicable'. The Committee desire the Ministry to issue the necessary amendment at an early date.</p>
8 (i)	61	<p>The Committee note with concern that the Department of Company Affairs have failed to comply with the recommendation of the Committee made in para 51 of their Sixth Report (Sixth Lok Sabha) presented to the House on the 17th March, 1978. The Committee feel that had the Department of Company Affairs pursued the matter in the right earnestness, they could have amended the Indian Consortium for Power Projects Private Limited and the Bharat Heavy Electricals Limited Amalgamation Order much earlier.</p>
(ii)	62	<p>The Committee, however, take note of the view expressed by the Department of Heavy Industry that the employees of the erstwhile Indian Consortium for Power Projects Private Limited are enjoying greater facilities and privileges in the Bharat Heavy Electricals Limited excepting some areas in which the privileges in the erstwhile Indian Consortium for Power Projects were more favourable.</p>



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(iii)	63	In view of the fact that a long time has elapsed since the issue of the above Amalgamation Order in 1975, its amendment at this stage might create some administrative problems more so because the employees of the erstwhile Indian Consortium for Power Projects Private Limited enjoyed greater facilities and privileges in the newly constituted Bharat Heavy Electricals Limited, the Committee, as an exception, do not press for the amendment of the Amalgamation Order at this stage.
(iv)	64	The Committee note in this connection that their recommendation contained in para 51 of Sixth Report (Sixth Lok Sabha) has been noted by the Department of Company Affairs for compliance in future. The Committee trust that the Department of Company Affairs would keep their assurance to the Committee while framing such amalgamation Orders in future.
9	65	The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix III.

## **APPENDIX—II**

**(Vide Para 21 of the Report)**

**No. 11012/24/77-Estt. (A)**

**MINISTRY OF HOME AFFAIRS**

**Government of India**

**New Delhi, the 18th March, 1978**

### **OFFICE MEMORANDUM**

**SUBJECT: CCS(CCA) Rules, 1965—Scope of Rule 10(4) thereof.**

As the Ministry of Finance etc. aware, rule 19(4) of the CCS(CCA) Rules, 1965 provides that where the penalty of dismissal, removal or compulsory retirement from services imposed upon a government employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government employee shall be deemed to have been placed under suspension from the date of the original order of dismissal, removal or compulsory retirement. A question has been raised regarding the scope of the action that can be taken against a government employee whose dismissal, removal or compulsory retirement from service has been set aside or declared or rendered void in consequence of or by a decision of a court should be taken into account which taking recourse to this rule. It is clarified for the information of authorities concerned that the further inquiry contemplated in rule 10(4) of the CCS(CCA) Rules, 1965 should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement has been sent aside by a court of law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further inquiry into the charges which have not been examined by the Court can, however, be ordered by the departmental authorities under Rule 10(4) *ibid* depending on the facts and circumstances of the each case.

Sd/-

(R. C. GUPTA),

*Deputy Secy. of the Government of India.*

## APPENDIX—III

(Vide Para 165 of the Report)

*Statement showing the Action Taken by Government on the Recommendations made by, and assurances given to, the Committee on Subordinate Legislation*

Sl. No.	Reference to para Nos. of Report	Summary of Recommendations/Assurances	Gist of Government reply
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1. Seventh Report  
(Fifth Lok Sabha)  
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The Committee are satisfied with the reply of the Ministry of Commerce that Clause 8A was inserted in the Jute (Licensing and Control) Order, 1961, with a view to relate the production of jute goods on a planned and regulated basis, to the availability of materials and to the needs and requirements of both domestic and overseas consumption.

The rules have been amended suitably by the Ministry of Commerce vide S.O. 558-E dated the 22nd July, 1980.

2. Seventh Report  
(Fifth Lok Sabha)  
25

The Committee are further satisfied to note from the reply that adequate safeguards are contained in Clause 8A against discriminatory treatment by the Jute Commissioner. In exercise of the powers vested in him under that clause, the Jute Commissioner follows a uniform policy, having regard to the guidelines contained in that clause and issues orders to individual

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manufacturer or class of manufacturers or manufacturers generally for the purpose of controlling the production of jute textiles.

The Committee also note that the Ministry of Commerce have no objection to the incorporation of a provision in the Order for appeal to the Central Government against the orders/directions of the Jute Commissioner, in cases where the manufacturer feels aggrieved by such orders/directions. The Committee desire the Ministry to take necessary action in this regard at an early date.

### 3. Seventh Report (Fifth Lok Sabha) 26

### 4. Fourth Report (Sixth Lok Sabha) 45

In their earlier Reports, the Committee on Subordinate Legislation have repeatedly emphasised the need for citation of precise statutory authority in the preamble to rules. The Committee have come across as many as 29 set of rules, preambles to which contain expressions like 'and all other powers enabling him in that behalf'. As observed by the Committee in para 17 of their Seventeenth Report (Fifth Lok Sabha) and para 50 of their Nineteenth Report (Fifth Lok Sabha), such expressions keep a person guessing as to what are the 'other powers' under which the rules have been framed. The Committee note with satisfaction that, pursuant to the recommendation of the Committee made in para 17 of their Seventeenth Report (Fifth Lok Sabha), the Department of Personnel and Administrative Reforms have assured that the expression 'all other powers

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The Government have noted the observations for future guidance *vide* Ministry of Home Affairs O.M. No. II/16012/1/78-S&I(D.I) dated the 6th March, 1978.

enabling him in that behalf' is not being used now, and will not be used in the preamble of subsequent amendments to rules. All the powers under which statutory orders are issued will in future be specified in the orders. The Department of Personnel and Administrative Reforms have also issued general instructions in this regard to all Ministries/Departments of Government of India. The Committee trust that the instructions issued by the Department of Personnel and Administrative Reforms in this regard will be strictly complied with by Ministries/Departments who will take care to scrupulously avoid such vague expressions as 'all other powers' etc., in the preamble to rules.

5. Fourth Report  
(Sixth Lok Sabha)  
46

In several cases enumerated in Appendix II to the Report, the Ministries/Departments were asked to omit the expression 'all other powers' enabling him in that behalf' appearing in the preamble to rules. However, in view of the advice of the Law Ministry that no amendment is considered necessary in the preamble to the rules, the Committee do not insist on the amendment of the rules already published and enumerated in the Appendix to this effect at this stage.

The Government have noted the observations for future guidance *vide* Ministry of Home Affairs O.M. No. II/16012/1/78-S&P (D. II) dated the 6th March, 1978.

6. Fourth Report  
(Sixth Lok Sabha)

70

The Committee note with satisfaction that the Ministry of Shipping & Transport (Transport Wing), on being pointed out, have agreed to further amend Rule 7 of the Delhi Transport Corporation (Advisory Council) Rules to provide for issue of a show-cause notice to a person before his membership of the Delhi Transport Corporation Advisory Council is terminated. The Committee desire the Ministry to amend the rule in question to the necessary effect at a very early date.

The Delhi Transport Corporation (Advisory Council) Rules have since been amended to the necessary effect *vide* G.S.R. 1686 of 1977, dated 17-12-1977.

7. Fourth Report  
(Sixth Lok Sabha)

75

The Committee regret to observe that there was a gap of more than two years between publication of the draft and final rules in the case of the Prevention of Food Adulteration (Second Amendment) Rules, 1975 (G.S.R. 508 (E) of 1975). They are not satisfied with the explanation given by the Ministry of Health and Family Welfare (Department of Health) in this regard. The Committee feel that with a little more care and promptness on the part of the Ministry of Health, the delay in publication of the amendment rules could have been considerably reduced. The Committee have from time to time been deprecating inordinate delays in issue of amendments to rules. It is hardly necessary for the Committee to point out that amendments to rules are brought with a purpose and till the amendments are promulgated, the underlying purpose is not served. The Committee note that the Ministry have since issued instructions to all concerned to finalise

The observations of the Committee have been noted by the Ministry of Health and Family Welfare (Department of Health) for future guidance *vide* their O. M. No. H. 110-18/2/77-DMS&PA dated the 14th/15th February, 1978.

such notifications within one year from the date of their publication for inviting comments from the public. The Committee desire the Ministry to make effort to further reduce the gap between the publication of draft rules and their publication in final form.

8. Fifth Report  
(Sixth Lok Sabha)

15

The Committee are not satisfied with the reply of the Ministry of Industry for giving retrospective effect to the Paper (Control of Production) Amendment Order, 1974, without an express authorisation to this effect in the parent Act, *viz.*, the Essential Commodities Act, 1955. In this connection, the Committee note the opinion of the Attorney-General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no subordinate Legislation can be given retrospective effect, unless the law under which it is made authorises Government to give such retrospective effect. As the Essential Commodities Act, 1955, under which the order has been issued, does not authorise Government to give retrospective effect to the Orders in question was without due legal authority. The Committee, therefore, recommend that the Ministry should either give effect to the order from the date of its publication in the Official Gazette or, alternatively, approach Parliament for incor-

The Paper (Control of Production) Order, 1974 had since been repealed by the Paper (Regulation of Production) Order, 1978 (S.O. 169-E of 1978) which came into force from the date of its notification in the Official Gazette. Hence no further action is called for.

porating a provision in the Essential Commodities Act empowering Government to give retrospective effect to the Orders issued thereunder.

9. **Fifth Report**  
**(Sixth Lok Sabha)**

41

The Committee note with concern that Government have failed to comply with the recommendation of the Committee made in para 28 of their First Report (Fourth Lok Sabha) that in cases where the rules are required to be published in draft form, the preamble to the final rules should give the particulars regarding previous publication, *viz.*, (i) the date of publication of rules in draft form, (ii) the last date fixed for receipt of comment from the public thereon, and (iii) the date on which the Gazette copies containing the draft rules were made available to the public. The Committee also find that as against the minimum of 30 clear days to be allowed to the public for sending their comments/suggestions on the draft rules in accordance with the oft-repeated recommendation of the Committee, the Delhi Administration had allowed only 15 days to the public for the purpose. The Committee, however, note the assurance of the Ministry of Finance/Delhi Administration for giving particulars about previous publication in final notifications in future. The Committee will like to re-stress upon the Ministry of Finance/Delhi Administration to allow not less than 30 clear days to the public for sending comments/suggestions on the draft rules in future.

The Delhi Administration have noted the recommendations for strict compliance in future. Instructions have accordingly been issued to all Departments of Delhi Administration/Local Offices to scrupulously comply with the recommendations in regard to affording adequate opportunity to the public for sending comments/suggestions on the draft rules and incorporating the requisite particulars regarding previous publication in the preamble to the final rules *vide* their Memorandum No. F. 8(63)/78-Fin (G) dated the 11th April, 1978.



10. Tenth Report  
(Sixth Lok Sabha)

9

The Ministry seem to be labouring under a false notion that they have not committed any financial or procedural irregularity in view of the circumstances having been explained in the explanatory memorandum to the Rules. The Committee need hardly point out in this regard that mere mention of the circumstances necessitating retrospective effect to the rules in the explanatory memorandum or there being no likelihood of retrospective action being challenged in a court of law, does not impart legal authority for giving retrospective effect to the rules. The Committee had clarified this position in para 8 of their Nineteenth Report (Fifth Lok Sabha) also, which had been brought to the notice of all Ministries/Departments of Government by the Department of Parliamentary Affairs. The Committee desire the Ministries/Departments to keep the observations of the Committee in view while giving retrospective effect to the Rules in future.

The Department of Parliamentary Affairs have drawn attentions to the Ministries/Departments to the recommendations of the Committee vide their O.M. No. F. 32(9)/78—R&C dated 30-8-1978, for information and future compliance.

11. Tenth Report  
(Sixth Lok Sabha)

45

The Committee note from the reply of the Ministry of Works and Housing that instructions have been issued by the Directorate of Printing *vide* their Office Order No. 7/31/62—All dated the 11th November, 1977, *inter alia*, providing therein for giving the allottee a reasonable opportunity of being heard in the matter before a penalty is inflicted upon him under Rule 18(i) and (ii) of the

The Ministry of Works and Housing have since amended the rules to the necessary effect. [See The Allotment of Government Residence to Officers employed in Government of India Press located at Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New

Allotment of Government residences to officers in Government of India Press, Nasik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah), Ring Road, New Delhi, Faridabad and Gangtok Rules, 1972. The Committee are, however, not satisfied with the reply of the Ministry that it is not necessary to incorporate the above executive instructions in the rules. In the opinion of the Committee executive instructions are no substitute for statutory rules as such instructions are not published in the Gazette and thereby escape the notice of the Committee for adjudging their propriety or fairness. The Committee feel that when executive instructions already provide for giving a reasonable opportunity of being heard to the person concerned, the Ministry should have no difficulty in putting those instructions on a statutory footing. The Committee, therefore, desire the Ministry to amend the rules to the necessary effect at an early date.

12. Tenth Report  
(Sixth Lok Sabha)

49

Delhi, Faridabad and Gangtok  
(Second Amendment) Rules, 1979  
(S.O. 3775 dated 17-11-1979)].

The Shipping Development Fund Committee (Death-cum-Retirement Gratuity) Rules, 1977 have since been amended to the necessary effect. [See The Shipping Development Fund Committee (Death-cum-Retirement Gratuity) (Amendment) Rules, 1978 (G.S.R. 1202, dated 30-9-1978)].

13. Tenth Report  
(Sixth Lok Sabha)  
58

The Committee note with satisfaction that, on being pointed out, the Ministry of Works and Housing have agreed to amend sub-regulation (4) of regulation 1 of the Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) regulations, 1977 so that it does not give an impression on the minds of the persons concerned that the jurisdiction of courts of law is being ousted in regard to interpretation of the Regulations. The Committee desire the Ministry to issue the proposed amendment in this regard at an early date.

The Ministry of Works and Housing have since amended the Hotels, Boarding Houses, Guest Houses, Hostels, Lodging Houses and Motels (Building Standards) Regulations, 1977 to the necessary effect. (See S.O. 1941 dated 1-7-1978).

14. Tenth Report  
(Sixth Lok Sabha)  
66

The Committee note from the reply of the Department of Science and Technology that rule 6 of the Survey of India (Deputy Stores Officer) Recruitment Rules, 1975 repeals the recruitment rules for the post of Deputy Stores Officer framed in 1950 by the then Ministry of Agriculture. According to the Department, no specific mention could be made of the (1950) rules in the repealing provision because these rules did not appear to have been formally notified in the form of statutory rules. The Committee feel that such rules as are not put on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by specific provision in the statutory rules. The

The Department of Science and Technology have since amended the rules to the necessary effect. [See the Survey of India (Deputy Stores Officer) Recruitment (Amendment) Rules, 1978 (G.S.R. 1162 dated 23-9-1978)].

Committee therefore, desire the Department to delete rule 6 of the Rules *ibid*, and issue necessary amendment to this effect at an early date.

15 Tenth Report  
(Sixth Lok Sabha)  
70

The Committee note that, on being pointed out, the Ministry of Finance (Department of Revenue) have issued Corrigendum to substitute 'fifth Amendment' for 'Fourth Amendment' appearing in the short title of Notification No. 76/75—Central Excise (G.S.R. 438 of 1975). The Committee desire the Ministry to take due care while assigning amendment numbers in short titles to the Notifications in future.

16 Tenth Report  
(Sixth Lok Sabha)  
75

The Committee note with satisfaction that on being pointed out, the Ministry of Works and Housing have agreed to amend the Water (Prevention and Control of Pollution) Rules, 1975, to incorporate therein the terms and conditions of service of the Chairman and Member-Secretary of the Central Board for the Prevention and Control of Water Pollution. The Committee approve the amendments as set out by the Ministry in their draft Notification and desire the Ministry to issue them at an early date.

17 Twelfth Report  
(Sixth Lok Sabha)  
29

The Committee note with satisfaction that, on being pointed out, the Department of Personnel and Administrative Reforms have agreed to a amend the Staff Selection Commission (Chairman, Member and Secretary—*cum*—Controller of Examinations) Recruitment Rules, 1977 so as to ex-

The Ministry of Finance have noted the recommendation for future guidance *vide* their O.M. No. 201/9/78—CX-6 dated 16-8-1978.

The Ministry of Works and Housing have since amended the Water (Prevention and Control of Pollution) Rules, 1975 to the necessary effect [See The Water (Prevention and the Control of Pollution) (Second Amendment) Rules, 1978 (G.S.R. 515—3 dated 28-10-1978)].

The Ministry of Home Affairs (Department of Personnel and Administrative Reforms) have since amended the rules to the necessary effect [See The Staff Selection Commission (Chairman, Member and Secretary—

8. Twelfth Report  
(Sixth Lok Sabha)  
49

clude rules of 5 thereof from the purview of rule 7 which provides for relaxation of rules. The Committee desire the Department to issue the requisite amendment at an early date.

The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have agreed to amend the Settlement Commission (Income-tax/Wealth-tax) (Conditions for Service of Chairman and Members) Rules, 1976 so as to specify therein the salary of the Chairman of the Settlement Commission (Income-tax/Wealth-tax). The Committee recommended that the rules may be amended to the necessary effect at an early date.

**cum-Controller of Examinations) Recruitment (Amendment) Rules, 1979 (G.S.R. 739 of 1979 dated the 2-6-1979).**

The Ministry of Finance (Department of Revenue—Central Division) have since amended the rules to the necessary effect [See The Settlement Commission (Income-tax/Wealth-tax) (Conditions of Service of Chairman and Members) (Amendment) Rules, 1978 (G.S.R. 5 of 1979, dated 6-1-1979)].

19. Fifteenth Report  
(Sixth Lok Sabha)  
12

The Committee note that a reply to their communication dated the 6th April, 1976 was received from the Ministry after a lapse of about two years in March, 1978. The Committee record their displeasure over the delay on the part of the Ministry in sending their reply the points to referred to them. The Committee need hardly emphasise that the reply furnished to the Committee should have been specific to the points raised and not evasive and vague. Vague and rambling replies lead to unnecessary correspondence which apart from delaying the matter also affect the time

The Ministry have regretted the delay in sending their reply. They have also noted the need for sending promptly specific replies to the points raised by the Committee. [See Ministry of Shipping and Transport (Transport Wing) O.M.No. PGR-94/76 dated the 31st March, 1979].

schedule of the Committee. The Committee expect the Ministries/Departments of Government to be prompt in sending their replies to the issues raised by a Parliamentary Committee. The replies should be specific and germane to the matters referred to Ministries for their comments or classification.

The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend Rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules so as to provide therein a suitable safeguard against arbitrary use of the power to prevent overloading vested in the Tindal. The Committee approve the following proviso proposed to be added to rule 19 in this regard and desire the Ministry to incorporate it in the rules at an early date :

“Provided that in the event of licensed harbour craft being found over loaded by the Tindal, only those passengers who entered the craft or the quantity of cargo that was loaded after the prescribed limit as specified in the licence, shall be asked to leave or that quantity of cargo to be removed, as the case may be, to conform with the condition of the assignment of the issue of licence.”

Proviso inserted in rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules vide G.S.R. 260 (E) of 1979.

(1)

(2)

(3)

(4)

21. Fifteenth Report  
(Sixth Lok Sabha)

57

The Committee observe that in their reply, the Ministry of Shipping and Transport (Transport Wing) have admitted that cancellation of a licence under rule 16(a) and (b), and 26 and removal of a Tindal's name from the register of tindals under rule 22(3) and (4) of the Major Port of Tuticorin (Harbour Craft) Rules, are such actions as come within the scope of penalties and, therefore, rule 32 applies to them. Under rule 32, provision already exists for giving an opportunity of being heard to the person on whom the penalty is imposed.

Rule 32 of the Major Port of Tuticorin (Harbour Craft) Rules has been amended to the necessary effect *vide* G.S.R. 260(E) of 1979.

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22. Fifteenth Report  
(Sixth Lok Sabha)

58

The Committee note with satisfaction that, on being pointed out, the Ministry have also agreed to amend the rules in such a way that opportunity of being heard is made available to the person concerned even at the stage when a charge of offence is made against him. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.

Rules 32 of the Major port of Tuticorin (Harbour Craft) Rules has been amended to the necessary effect *Vide* G.S.R. 260(E) of 1979.

23. Fifteenth Report  
(Sixth Lok Sabha)

61

The Committee note that the Major Port of Tuticorin (Harbour Craft) Rules, 1976 were originally published under G.S.R. 196 in the Gazette of India Part II, Section 3(i), dated the 12th February, 1977. Subsequently, the same rules were published under G. S.R. 425 on the 26th March, 1977

Inquiry revealed that three authenticated copies of the notifications were inadvertently despatched on different dates to the press for publication. The Ministry have regretted the lapse. To prevent recurrence of

and again under G.S.R. 529 on the 16th April, 1977. Whereas the rules published under G.S.R. 196 and 425 contained Rules Nos. 1 to 32, the rules published under G.S.R. 529 did not contain Rules 31 and 32 at all. In their reply, the Ministry have attributed the mistake to an oversight on the part of the press authorities. The Committee observe that it is a clear case of negligence on the part of the press authorities as well as the Ministry. The Ministry should not rest content with the issue of corrigendum, but take up the matter with the press authorities to inquire into the circumstances leading to the publication of the rules as many as three times and omission of rules 31 and 32 in the case of last printing. The Committee desire that suitable corrective measures in consultation with the Press authorities may be devised to ensure against recurrence of such instances in future.

Keeping in view the explanation furnished by the Ministry of Finance (Department of Economic Affairs) in respect of the notification (G.S.R. 2509 of 1975) containing Rules framed under Clause (2) of Article 77 of the constitution, the Committee do not insist at this stage on giving of short titles to such notifications already published. However, they except the Ministry to keep their assurance to comply with the requirement of giving short titles to all such rules whenever issued in future.

such a lapse in future, a Register have been started to enter date-wise the notifications to be issued. [See Ministry of Shipping and Transport (Transport Wing) O.M. No. PGL-76/77 dated the 24th September, 1979].

The Ministry have noted the observation of the Committee. [See Ministry of Finance (Department of Economic Affairs) O.M. No. 8(1) /78-FB. I dated the 3rd January, 1979].



25. Fifteenth Report  
(Sixth Lok Sabha)  
66

The Committee note that a reply to their communication dated the 4th May, 1976 was received from the Ministry of Finance after a lapse of more than two years and four months in September, 1978. The Committee deprecate such inordinate delay on the part of the Ministry in furnishing their comments and expect them to be prompt in attending to the communications from the Committee in future.

The Ministry have expressed their regrets for the delay in replying. Instructions have been issued to all concerned to ensure that such lapses do not occur in future. [See Ministry of Finance (Department of Economic Affairs) O.M. No. 8(t)/78-FB. I dated the 3rd January, 1979].

26. Fifteenth Report  
(Sixth Lok Sabha)  
75

The Committee note that the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 was published thrice and the Berwa River Board Rules 1977 were published twice in the Gazette. The Committee have time and again emphasized that the responsibility of a Ministry/Department does not cease with the sending of the notification to the Press. After the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to see whether they have been correctly printed and, if necessary, issue a corrigendum thereto at the earliest opportunity. In both the cases, the Ministries concerned took action to issue the corrigendum only after it was pointed out to them by the Committee. Had the Ministries of Works and Housing and Agriculture and Irrigation (Department of Irrigation) been vigilant in this respect, they would have themselves detected the mistakes and issued the necessary corrigendum.

The Ministry have noted the recommendation for future guidance [See Ministry of Works & Housing O. M. No. 7/32/78-UCU dated the 20th April, 1979].

27. Fifteenth Report  
(Sixth Lok Sabha)  
76

The Committee take a serious view of such lapses as already pointed out by them in para 93 of their Twentieth Report (Fifth Lok Sabha) and brought to the notice of all concerned *vide* Department of Parliamentary Affairs O.M. No. F. 32(1)/76-R&C, dated the 31st January, 1977.

The Committee desire that the matter may be taken up with the Press authorities also to inquire into the circumstances leading to the publication of the rules time and again and suitable corrective measures may be devised to ensure against recurrence of such instance in future.

The matter was investigated by the Government of India Press, Preventive measures have been taken to avoid recurrence of such instances in future. [See Ministry of Works & Housing O. M. No. 7/32/78-UCU dated the 20th April, 1979.]

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# MINUTES

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### III

## MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1980-81)

The Committee met on Wednesday, the 27th August, 1980 from 15.00 to 17.00 hours.

### PRESENT

Shri Mool Chand Daga—*Chairman*

### MEMBERS

2. Shri M. Ankineedu
3. Shri Eduardo Faleiro
4. Shri Harish Kumar Gangawar
5. Shri Jaipal Singh Kashyap
6. Shri K. Lakkappa
7. Shri T. Nagaratnam
8. Shri Balasaheb Vikhe Patil
9. Shri Ratansinh Rajda
10. Shri Ajit Pratap Singh
11. Shri Chandra Shekhar Singh
12. Shri R. S. Sparrow

### SECRETARIAT

Shri H. L. Malhotra—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 1—8 on the following subjects:—

S. No.	Memorandum No.	Subject
(1)	(2)	(3)

(vi) 6 The Indian Telegraph (Fourth Amendment) Rules, 1976 (G.S.R. 98-E, published in the Gazette of India, Extraordinary, Part II Section 3(1) dated the 27th February, 1976).

(vi) The Indian Telegraph (Fourth Amendment) Rules, 1976 (G.S.R. 98-E of 1976)—(Memorandum No. 6).

13. The Committee considered the above Memorandum and decided to hear oral evidence of the representatives of the Ministry of Communications (P. & T. Board) regarding delay of two years in finalising their final reply to the points referred by the Committee.

The Committee then adjourned to meet again on Thursday, the 28th August, 1980 at 11.00 hours.

<sup>a</sup> Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)  
(1980-81)**

The Committee met on Saturday, the 6th September, 1980 from 11.00 to 12.45 hours.

**PRESENT**

**Shri Mool Chand Daga—Chairman**

**MEMBERS**

2. Shri M. Ankineedu
3. Shri Harish Kumar Gangawar
4. Shri Jaipal Singh Kashyap
5. Shri K. Lakkappa
6. Shri T. Nagaratnam
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda
9. Shri Chandra Shekhar Singh
10. Shri R. S. Sparrow

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*Representatives of the Ministry of Communications*

1. Shri S. K. Ghose, *Secretary*
2. Shri M. N. Mathur, *Deputy Director General (P&T Board)*.

**SECRETARIAT**

**Shri H. L. Malhotra—Senior Legislative Committee Officer**

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11. The Committee then heard evidence of the representatives of the Ministry of Communications regarding the Indian Telegraph. (Fourth Amendment) Rules, 1976 (G.S.R. 98-E of 1976).

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\*Omitted portion of the Minutes are not covered by this Report.

12. With regard to the five references made to the Ministry, the representatives stated that the sections concerned in the Ministry have reported in writing that three references of 1977 were not received and were not available with them. They had, however, received first and the last reference of the 21st September, 1976 and 2nd May, 1978 respectively.

13. When asked whether there was any special procedure laid down to deal with the papers received from Parliament, the representative stated that there was none. There was a Parliament Section whose function was to see that Parliamentary papers were dealt with expeditiously in the respective sections.

14. When enquired whether the delay in sending the reply was justified, the representative replied in the negative. The representatives apologised for the inordinate delay and they had done so in writing also.

15. The representative of the Ministry further stated that in this particular case, the Parliament Cell in the Ministry did not function. The file remained untraced for 16 months. They had issued instructions after this. They promised also to tone up Parliament Section which must act as a bridge between Parliament and the Ministry.

*The Committee then adjourned*

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**VI**

**MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)  
(1980-81)\***

**The Committee met on Monday, the 8th September, 1980 from 15.00 to 16.45 hours.**

**PRESENT**

**Shri Mool Chand Daga—Chairman**

**MEMBERS**

2. Shri T. V. Chandrashekharappa
3. Shri Eduardo Faleiro
4. Shri Harish Kumar Gangawar
5. Shri Jaipal Singh Kashyap
6. Shri T. Nagaratnam
7. Shri Balasaheb Vikhe Patil
8. Shri M. Ramanna Rai
9. Shri Ratansinh Rajda
10. Shri Chandra Shekhar Singh
11. Shri R. S. Sparrow

**SECRETARIAT**

**Shri H. L. Malhotra—Senior Legislative Committee Officer**

**2. The Committee considered Memoranda Nos. 14 to 24 on the following subjects:—**



S. No.	Memorandum No.	Subject
1	2	3
(ii)	15	The Drugs and Cosmetics (First Amendment) Rules 1978 (G. S. R. 376-E of 1978)
(iii)	16	(a) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Amendment Rules, 1978 (G. S. R. 646 of 1978), and (b) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Amendment Rules, 1978 (G. S. R. 647 of 1978).
(iv)	17	The Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 (G. S. R. 525 of 1978)
(v)	18	The General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Third Amendment Scheme, 1978 (S.O. 1410 of 1978).
(vi)	19	The Central Company Law Service (Amendment) Rules, 1978 (G. S. R. 145 of 1978).
(vii)	20	(a) The Department of Space Employees (Classification, Control and Appeal) Rules, 1976 (S.O. 270-E of 1976) ; (b) The Export Inspection Council Employees (Classification, Control and Appeal) ; Rules, 1978 (S.O. 42 of 1978) ; and (c) The Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978 (S.O. 43 of 1978).
(ix)	22	Implementation of recommendation contained in para 51 of the Sixth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) re: The Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd., Amalgamation Order, 1974 (G.S.R. 155-E of 1975).

\*Omitted portions of the Minutes are not covered by this Report.

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- (ii) The Drugs and Cosmetics (First Amendment) Rules, 1978 (G.S.R. 376-E of 1978)—(Memorandum No. 15).

4. The Committee considered the above Memorandum and noted that the Ministry of Health and Family Welfare (Deptt. of Health) had agreed with the suggestion to lay down suitable guidelines in matters of minimum requirements of equipment, staff, capacity for manufacture and other facilities necessary for grant of a loan licence manufacturing Unit proposed to place the matter before the Ayurvedic and Unani Drugs Technical Advisory Board at its next meeting for the purpose. The Committee desired the Ministry to process the matter expeditiously and to lay down suitable guidelines in the matter at their earliest.

- (iii) (a) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Amendment Rules, 1978 (G.S.R. 646 of 1978; and
- (b) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Amendment Rules, 1978 (G.S.R. 647 of 1978) (Memorandum No. 16).

5. The Committee considered the above Memorandum and noted from the reply of the Ministry of Shipping and Transport (Transport Wing) that the practice of recording of reasons in writing for curtailment or extending the period of probation by the concerned authorities was already in vogue. The Committee felt that the Ministry should, therefore, have no objection in placing the same on a statutory footing by suitably amending the rules. The Committee further emphasized the need for laying down suitable guidelines defining the 'exceptional circumstances' so as to obviate any scope of discrimination in that regard.

- (iv) The Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 (G.S.R. 525 of 1978) (Memorandum No. 17).

6. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (now Ministry of Rural Reconstruction) had agreed to amend Column 13 of the Schedule to the Directorate of Marketing and Inspection, Accountant (Non-SAS) Recruitment Rules, 1978 to the necessary effect. The Committee desired the Ministry to do the needful at an early date if not already done.

- (v) The General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Third Amendment Scheme, 1978 (S.O. 1410 of 1978)—(Memorandum No. 18).

7. The Committee considered the above Memorandum and noted with concern that despite a categorical reference by the Committee, the Ministry of Finance (Department of Economic Affairs) had not indicated anything precisely about the express authority in the parent Act i.e. the General Insurance Business (Nationalisation) Act, 1972 empowering them to give retrospective effect to the scheme under reference. Under the circumstances, the Committee could not but infer that the retrospective effect given to the Scheme was without due legal sanction. The Committee felt that the benefits accruing from the Scheme must have already been passed on to its beneficiaries as enough time had since elapsed and it would be rather a difficulty and embarrassing exercise to withdraw the benefit already drawn both administratively as well as legally because Government could not even annul the amending notification with retrospective effect without due legal authority in the parent Act. In the circumstances, the only course left open to the Ministry was to introduce a suitable legislation for amending the enabling Act in order to regularise the irregularities already committed in that regard.

8. The Committee felt that a duty was also cast upon the Ministry of Law at the time of vetting to point out to the administrative Ministry if any statutory Order aimed at giving retrospective effect to any of its provisions was without duly legal authority.

9. The Committee further noted that the Scheme in all contained two clauses which were contradictory to each other. The first clause had stated that the Scheme would come into force on the date of its publication in the Official Gazette, that is, the 20th May, 1978 whereas the other clause provided for retrospect effect to some of the provisions in the original Scheme from the 1st January, 1973. In the opinion of the Committee, this sharp contrast in a Scheme of only two clauses could be the result of the lack of proper attention on the part of the Ministry.

10. The Committee, however, noted the assurance of the Ministry for appending the requisite explanatory memorandum indicating the reasons for giving retrospective effect in respect of all statutory Orders in future. The Committee trusted that the Ministry would keep their assurance and reluctantly agreed not to insist on the

publication of the explanatory memorandum in respect of the Scheme under reference at such a late stage.

- (vi) The Central Company Law Service (Amendment) Rules, 1978 (G.S.R. 145 of 1978)—(Memorandum No. 19).

11. The Committee considered the above Memorandum and desired the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) to amend sub-rule (5) of rule 12 of the Central Company Law Service (Amendment) Rules, 1978 on the following lines as suggested by the Department of Personnel and Administrative Reforms at an early date:—

“Rule 12(5): In cases not covered by sub-rule (1) to (4) above, seniority of officers appointed to the service shall be governed by such orders as may be issued by the Government in consultation with the Commission.”

- (vii) (a) The Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 (S.O. 270-E of 1976);  
 (b) The Export Inspection Council Employees (Classification, Control and Appeal) Rules, 1978 (S.O. 42 of 1978); and  
 (c) The Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978 (S.O. 43 of 1978)—(Memorandum No. 20).

12. The Committee considered the above Memorandum and noted that in accordance with the administrative instructions issued by the Ministry of Home Affairs (Deptt. of Personnel and Administrative Reforms) vide their O.M. No. 11012/24/77-Estt. (A) dated the 18th March, 1978, further inquiry contemplated in rule 10(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement had been set aside by a court of law on technical grounds without going into the merits of the case or when fresh material had come to light which had not been before the court.

13. The Committee also noted that in a similar case i.e., the Coir Board Service (Classification, Control and Appeal) Bye-laws, 1969, the Department of Industrial Development had amended the bye-laws and added the following proviso:—

“Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case”.

14. The Committee had time and again stressed that the Administrative Instructions were no substitute to Statutory Rules/Regulations. Such instructions were not being published in the Official Gazette and, therefore, escaped the notice of the Committee. The Committee decided to ask the Department of Space and the Ministry of Commerce to amend the rules under reference on the lines of instructions issued by the Ministry of Home Affairs on the 18th March, 1978. The Committee also desired the Ministry of Home Affairs to amend rule 10(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 so as to place the instructions on a statutory footing.

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- (ix) Implementation of recommendation contained in para 51 of the Sixth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) re: The Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975)—(Memorandum No. 22).

17. The Committee considered the above Memorandum and took note of the view expressed by the Department of Heavy Industry that the employees of the erstwhile Indian Consortium for Power projects Private Limited were enjoying greater facilities and privileges in the Bharat Heavy Electricals Limited excepting some areas in which the privileges in the erstwhile Indian Consortium for Power Projects might have been more favourable than those in the Bharat Heavy Electricals Limited. The Committee noted in this connection that their recommendation contained in para 51 of the Sixth Report (Sixth Lok Sabha) had been noted by the Department of Company Affairs for compliance in future.

18. The Committee noted the Ministry's view that a long time had passed since the issue of the Amalgamation Order in 1975, its amendment at this stage might create some administrative problems more so because the employees of the Indian Consortium for Power Projects Private Limited enjoyed greater facilities and privileges in Bharat Heavy Electricals Limited. In view of the difficulty expressed by the Ministry, the Committee decided not to press for an amendment at this stage. The Committee, however, felt that the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) would keep their assurance to take note of Committee's recommendation made in para 51 of their Sixth Report (Sixth Lok Sabha) while framing such amalgamation Orders in future.

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*The Committee then adjourned.*

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\*Omitted portions of the Minutes are not covered by this Report.

## XII

### MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1980-81)

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The Committee met on Tuesday, the 2nd December, 1980 from 15.30 to 15.50 hours.

#### PRESENT

Shri Mool Chand Daga—*Chairman.*

#### MEMBERS

2. Shri M. Ankineedu
3. Shri Jaipal Singh Kashyap
4. Shri Balasaheb Vikhe Patil
5. Shri Ratansinh Rajda

#### SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee considered their draft \*\* Fourth Reports and adopted them.

3. The Committee authorised the Chairman and, in his absence, \*\*Shri Jaipal Sinsh Kashyap to present their \*\* Fourth Reports to the House on their behalf on the \*\* 10th December, 1980 respectively.

*The Committee then adjourned .*

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\*\*Omitted portions of the Report are not covered by this Report.